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Paper No. 5

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OFFICE OF PETITIONS

In re Application of :
Victor D. Dolecek : DECISION DISMISSING
Application No. 09/832,518 : PETITION
Filed: 9 April, 2001 :
Attorney Docket No. P9529 :
:

This is a decision on the petition filed on 16 October, 2001, requesting that the above-identified application be accorded a filing date of 9 April, 2001, with a drawing of Figure 1 as a part of the original disclosure of the application.

The application was filed on 9 April, 2001. However, on 16 August, 2001, Initial Patent Examination Division mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a 9 April, 2001, filing date, but that the drawing of Figure 1 appeared to have been omitted.

In response, on 16 October, 2001, a drawing containing Figure 1 was filed accompanied by the present petition. Petitioner argues that a drawing of Figures 1 was filed on 9 April, 2001. In support, the petition, which is signed by a registered practitioner, includes a statement that the practitioner remembers that Figure 1 was part of the application as originally filed.

The argument and evidence presented are not persuasive. Counsel's declaration was made over six months after the events in question and recites counsel's recall the preparation and

filling of the application with the USPTO. The application does not appear to be unusual and it is not understood why the filing of this particular application would stand out in such detail in counsel's memory, particularly in view of the fact that counsel prepared and mailed similar papers to the PTO on a routine, daily basis.

The Office file is the official record of the papers originally filed in this application. A review of the official record reveals that no drawing figures were filed with the original application papers. Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If a new application is being filed, all parts of the application being submitted should be separately listed on the postcard (e.g. the number of pages of specification (including written description, claims, and abstract), number of claims, number of sheets of drawings, and number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.

Petitioner states that an itemized postcard receipt was included with the application papers filed on 9 April, 2001, but was never returned to petitioner's counsel after the application was deposited. While, assuming the postcard was received in the Office with the other application papers on 9 April, 2001, this is a most unfortunate situation, petitioner simply has provided no persuasive evidence that Figure 1 was among the application papers received in the Office on 9 April, 2001.

The petition is **dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

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The application is being forwarded to Initial Patent Examination Division for further processing with a filing date of 9 April, 2001, using the application papers filed on that date.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



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